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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter Of)

Amendment of Section 73.606)

Table of Allotments)

Television Broadcast Stations)

(Tooele, UT))

MM Docket No. _____

RM No. _____

To: Chief, Allocations Branch

CONTINGENT AMENDMENT TO PETITION FOR RULE MAKING

Tooele 36, L.L.C. ("T36"), by its counsel, hereby submits its contingent amendment to its pending petition for rule making for a new television allotment for Tooele, UT by substituting NTSC channel 57 for NTSC channel 36 requested in T36's original petition. If required, T36 proposes to amend Section 73.606 of the Commission's rules as follows:

Channel No.

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Tooele, UT	--	57

I. Background

T36 is filing this amendment to its petition for rule making pursuant to the Commission's Public Notice, 14 FCC Rcd 19559 (1999) ("Window Notice") announcing the opening of a window for the filing of, among other things, amendments to pending petitions for rule making that had sought to amend the TV Table of Allotments to add a new NTSC television allotment. T36 had sought allotment of NTSC channel 36 for Tooele's first local television service.

However, a conflicting proposal was filed seeking to add Ch. 36 at Ogden, UT in place of

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assigned Channel 34 (MM Docket No. 99-197). T36 has opposed that proposal. If it is adopted, Ch. 36 would not be available at Tooele. Under the Window Notice, T36 was afforded the opportunity to amend its pending petition for rule making to specify a new channel if required. Until the Commission rules on the Ogden proposal, it cannot be determined whether the instant filing is required, but it is necessary to file at this time due to the window established. Accordingly, the instant amendment to the pending rulemaking petition is filed as a contingent amendment.

T36 has identified NTSC channel 57 for an allotment to Tooele, UT in the event the Ogden channels are changed. The attached Engineering Statement of Pete E. Myrl Warren III of WES, Inc. shows that the proposed allotment would meet the minimum distance separation requirements to any other digital or NTSC stations and is free of interference to all Class A stations. Finally, the allocation does not cause any interference to any digital stations.

II. The Public Interest Compels Grant of This Petition

T36 seeks to change its proposal for a new allotment to Tooele, UT, consistent with the Window Notice, so that an additional service to a population of 1,428,522 persons can be made available. Allotment of NTSC channel 57 will promote the objectives of Section 307(b) of the Communications Act of providing a fair, efficient, and equitable distribution of television broadcast stations among the various states and communities. See *National Broadcasting Co. v. U.S.*, 319 U.S. 190, 217 (1943) (describing goal of Communications Act to “secure the maximum benefits of radio to all the people of the United States”); *FCC v. Allentown Broadcasting Co.*, 349 U.S. 358, 359-62 (1955) (describing goal of Section 307(b) to “secure local means of expression”). As with T36’s original proposal, a grant of this amendment would promote the

second allotment priority set forth in the Sixth Report and order in Docket Nos. 8736 and 8975, 41 FCC 148,167 (1952) of providing each community with at least one television station.

In addition, grant of T36's petition may foster the emergence of a new national television network by establishing an outlet in a top 100 television market (36). In the past, the Commission has relied on these public interest objectives in making new allotments. In Docket No. 13340, Interim Policy on VHF Television Channel Assignments, 21 RR 1695 (1961), recon. denied, 21 RR 1710a (1961) ("Interim Policy"), the Commission instituted a rule making proceeding in an effort to find a means of alleviating the need for additional channel assignments in the larger television markets in order to foster the development of a nationwide competitive television system.

The Commission concluded that the most efficient means of accomplishing its objective would be to permit, under limited circumstances, channel assignments at substandard spacing. **Since T36 is a fully spaced station there is no reason that it should not be looked at with the same or more favorable consideration.** The short-spaced allotments were authorized subject to the requirement that the new stations provide protection to the existing short-spaced stations to assure that they would not receive interference in excess of the amount they otherwise would receive from a co-channel station operating with maximum facilities at full distance separation. The Commission designated ten markets in which such a "squeeze in" procedure would be considered. Many of these proposals, as well as those which arose out of the Commission's Interim Policy, involved a third commercial VHF allotment in a market that was designed to provide an additional broadcast outlet which was critical to the establishment of a third competitive network. See, e.g., Grand Rapids, Michigan, 21 RR 1737 (1961) (Commission

assigned a second VHF channel to Grand Rapids and a third to the Grand Rapids-Kalamazoo market),¹ Rochester, New York, 21 RR 1748a (1961)(same).

Similarly, in the VHF Drop-In Proceeding, 81 FCC 2d 233 (1980), the Commission granted requests for waiver of Section §73.610 to permit the allotment of new short-spaced VHF assignments to Charleston, West Virginia; Johnstown, Pennsylvania; Salt Lake City, Utah; and Knoxville, Tennessee. Each short-spaced allotment was subject to the condition that the new station provide equivalent protection to the existing station to which it was short-spaced. Id. at 234.

In granting the waiver requests, the Commission recognized that the four VHF drop-ins represented a significant departure from Commission precedent.² Nevertheless, the Commission concluded that the new VHF allotments would serve important public interest objectives such as providing new local service, the promotion of additional networks, and increased competition in advertising markets. The Commission found these to be substantial contributions to the public interest. Id. at 253. Moreover, on reconsideration, the Commission observed that application of the distance separation rules would achieve a result contrary to the public interest by preventing new and needed television services, and that a waiver of the rules would not undermine the policy behind them as set forth in the Sixth Report and Order in Docket Nos. 8736 et. al., Amendment

¹ In Grand Rapids, the Commission allotted Channel 13 to Grand Rapids, which required the substitution of Channel 9 for Channel 13 at Cadillac, Michigan, and the substitution of channel 7 for a Channel 9 allotment at Alpena, Michigan. Id. at 1745. The Commission's action was designed to alleviate the "critical shortage of competitively comparable facilities in major markets. . . ." 21 RR at 1745.

² Despite the Commission's Interim Policy, there had been no short-spaced VHF allotments in the continental United States prior to its decision in VHF Top 100 Markets. 81 FCC 2d at 239.

of Section 3.606 of the Commission's Rules and Regulations, 41 FCC 148 (1952) ("Sixth Report and Order").

The public interest benefits that would result from a grant of T36's amended proposal are the same public interest objectives which the Commission sought to foster in the VHF Drop-In Proceedings and the Interim Policy, and yet unlike as in those proceedings, no waiver of the Commission's rules is required in order to grant T36's amended proposal here. The public interest fully supports a grant of T36's amended proposal.

III. Conclusion

Wherefore, Tooele 36, L.L.C. respectfully requests that as proposed in this amendment to T36's original petition for rule making, the Commission initiate a rule making proceeding to amend Section 73.606 (b) of its rules, the television Table of Allotments to add an allotment for NTSC channel 57 for Tooele, UT, should it change the Ogden, UT DTV Allotment from 34 to 36.

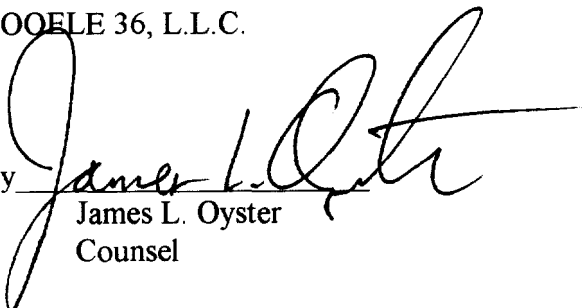
Respectfully submitted,

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July 17, 2000

TOOELE 36, L.L.C.

By 
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CONTINGENT
ENGINEERING EXHIBIT
PETITION TO MODIFY THE TABLE OF
ALLOTMENTS TO SPECIFY A
DISPLACEMENT CHANNEL TO
SUBSTITUTE FOR TOOELE, UT
Channel 36

July 13, 2000

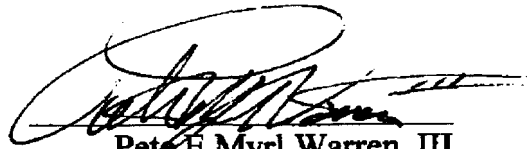
ENGINEERING STATEMENT

Wes, Inc.

DECLARATION

I, Pete E Myrl Warren, III, declare and state that I am a Certified Broadcast Engineer, by the National Association of Radio and Television Engineers, and my qualifications are a matter of record with the Federal Communications Commission, and that I am an engineer in the firm of Wes, Inc., and that the firm has been retained to prepare an engineering statement on behalf of Tooele 36, L.L.C.

All facts contained herein are true to my knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. All Exhibits were prepared by me or under my supervision. I declare under penalty of perjury that the foregoing is true and correct.



Pete E Myrl Warren, III

Executed on the 13th day of July, 2000

Narrative Statement

I. GENERAL

This engineering report has been prepared on behalf of Tooele 36 L.L.C., in support of its contingent request for a displacement channel (Channel 57) for its pending application for Channel 36.

II. ENGINEERING DISCUSSION

The applicant originally applied for an allocation on channel 36 in Tooele, UT. The applicant appears to be clear of Class A interference and all DTV allotments, should the applicant for a DTV channel change from 34 to 36 (KULC) be successful then this displacement will be necessary as outlined in Exhibit RM-1

The applicant proposes the same site as the Commission assigned for the city co-ordinates:

North Latitude: 40° 32' 00"

West Longitude: 112° 17' 36"

Should it become necessary to amend the current rule making it is proposed to amend Section 73.606(b) of the Commission's rules, NTSC Table of Allotments, to allot Channel 57 (718-724 MHz) for NTSC television operation. As demonstrated below, the proposed Channel 57 NTSC operation would not cause any harmful interference to any other analog NTSC or DTV station or allotments exceeding the Commission's guidelines. Tooele Channel 57 would provide additional service to a population of 1,428,522 people if operated from an available site as a maximum facility. The proposed NTSC Channel 57 has site availability.

Analog NTSC TV Allocation Situation

The attached Exhibit RM-2 demonstrates that Channel 57 **is free of any short spacing to any other NTSC stations.**

Class A Situation

A complete study of all Class A LPTV stations has been conducted. Channel 57 will not cause any interference to any Class A stations. The attached Exhibit RM-4 demonstrates lack of interference to Class A.

DTV Allocation Situation

The attached Exhibit RM-1 lists all digital allotments that must be considered within 429 kilometers of the proposed rule making. There are none.

III. Summary

The applicant may need to change channel from Channel 36 to channel 57 in order to avoid interference to digital television. On channel 57 it will not cause any interference to any NTSC stations or to any Digital stations.

Exhibit RM-1

Tooele, UT

July 13, 2000

by WES, Inc. Broadcast Consultants

Spacing study to Digital TV on contingent channel 57

Study Location:

Tooele, UT Channel 57

NTSC Study Station, Transmitter Coordinates: 40-32-0 N 112-17-36 W

Study distance: 429 km

NTSC TO DTV STUDY RESULTS

City of License ST Chan Bearing Distance Req. Dist Diff.

Station is in the clear!

**Exhibit RM-2
Tooele, UT**

July 13, 2000

by WES, Inc. Broadcast Consultants

Spacing Study to NTSC on contingent channel 57

***** TV CHANNEL SPACING STUDY *****

Job title: Tooele, UT

Latitude: 40 32 0

Channel: 57

Longitude: 112 17 36

Database file name: tv000117.edx

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.
Result									
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49o	ALLOTM	11411	OGDEN	UT	2	A	19.3	81.3	31.4
49.9									

***** End of channel 57 study *****